



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/157323

PRELIMINARY RECITALS

Pursuant to a petition filed May 05, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on June 03, 2014, at Milwaukee, Wisconsin. The record was held open post-hearing for the Petitioner to provide additional information. No additional information was submitted. The record closed on June 24, 2014.

The issue for determination is whether the agency properly seeks to recover an overissuance of child care benefits from the Petitioner in the amount of \$2,398.20 for the period of July 14, 2013 – October 19, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

█

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Tameika Terrell

Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. On April 1, 2013, September 9, 2013 and October 15, 2013, the agency issued Notices of Child Care Eligibility to the Petitioner informing her that she was eligible to receive child care benefits for four children beginning May 1, 2013. The notices also informed her that she must report any changes that could affect her eligibility no later than 10 calendar days after the change. They also informed her that she must report if a child was out of her home no later than 5 working days after the child leaves the home. Additionally, they informed her that if she stops working, she must contact the agency.
3. On April 1, 2013, July 29, 2013, October 7, 2013, and October 21, 2013, the agency issued Child Care Authorization Information notices informing the Petitioner of the details of the child care authorizations. The notices also informed the Petitioner that she must immediately report a change in the number of work hours or other approved activity hours and a change in the authorized hours needed. The notices also informed her of the requirement to report any change in household composition or income within 10 days of the date of the change.
4. Petitioner had child care authorizations for three children at [REDACTED] as follows:
 - [REDACTED] 30 hours/week 3/31/13 – 10/19/13
 - [REDACTED] 24 hours/week 8/4/13 – 10/12/13
 - [REDACTED] 30 hours/week 10/13/13 – 10/19/13
 - [REDACTED] 30 hours/week 6/23/13 – 8/3/13
 - [REDACTED] 24 hours/week 8/4/13 – 10/12/13
 - [REDACTED] 30 hours/week 10/13/13 – 10/19/13
5. On October 2, 2013, the mother of [REDACTED] filed an application for child care benefits for [REDACTED] with the agency.
6. On October 4, 2013, the Petitioner submitted a Six Month Report Form (SMRF). The Petitioner reported household members [REDACTED], [REDACTED] and [REDACTED]. Petitioner reported that [REDACTED]'s mother was granted temporary custody of the child from August 15, 2013 – November 15, 2013. The Petitioner also reported that her employment with [REDACTED] ended July 10, 2013. The agency received a verification from [REDACTED] that the Petitioner was a part-time employee there from August 5, 2002 – July 11, 2013. Petitioner further reported that she no longer received child support for [REDACTED] and [REDACTED] since June, 2013 and no longer received Kinship Care for [REDACTED] because she was in her mother's custody since August 15, 2013.
7. On October 14, 2013, the agency processed the changes reported by the Petitioner and ended her child care authorizations on October 19, 2013.
8. On April 1, 2014 and April 2, 2014, the agency issued Child Care Client Overpayment Notices to the Petitioner informing her that the agency intends to recover an overissuance of child care benefits in the amount of \$2,398.20 for the period of July 14, 2013 – October 31, 2013 for failure to report a change household income, a change in employment and/or work hours and a failure to report accurate household members or residency.
9. On May 5, 2014, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

Wis. Stat. § 49.195(3), provides as follows:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the

department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in Wis. Stat. § 49.155, and thus they are within the parameters of § 49.195(3). Recovery of child care overpayments also is mandated in the Wis. Adm. Code, §DCF 101.23. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment. Wis. Adm. Code, §DCF 101.23(1)(g). Recovery must occur even if the error was made by the agency.

A parent or guardian is eligible for child care services if she needs the care to attend Wisconsin Works (W-2) approved school, to work, or to participate in W-2 activities. Wis. Stat. § 49.155(1m)(a); W-2 Manual, §15.2.0. The agency shall recover child care payments if the authorized payments would have been less because the parent was absent from an approved activity while the child was in care. Child Day Care Manual (Manual), Chapter 2, §2.3.1. If both parents are in the household both must be working or attending W-2 activities. Wis. Adm. Code, §DCF 101.26(1).

Parents or other persons receiving Wisconsin Shares child care assistance must report any changes in circumstances that may affect his or her eligibility to the child care administrative agency within 10 days of the change. Manual, §1.15.1. The agency has ten business days following receipt of a report of a change in circumstances that may affect eligibility to process the change report. Manual, § 1.15.3. If there is a change in the authorization that will result in a decreased child care benefit, the current authorization must be ended effective on the upcoming Saturday. Manual, § 3.8.5.

In this case, the Petitioner had authorizations for three children during the overpayment period. The Petitioner testified that she reported that her employment ended to the FoodShare/Medicaid agency in July, 2013. The case comments produced by the agency do not reflect such a contact and Petitioner was unable to produce any evidence to demonstrate that she continued to be eligible for child care or that she properly contacted the agency regarding the end of her employment. The Petitioner did not contact the child care agency directly to report the end of her employment. Thus, her authorizations continued and the child care agency continued to make payments to the provider. Petitioner also did not report that one child was no longer in her custody effective August 15, 2013. Thus, the agency continued to make payments to the provider for this child based on the Petitioner's authorization until October, 2013 when the Petitioner reported the child was back in her mother's custody. The Petitioner argues that the agency should have discontinued her authorization for the child at that time.

The Petitioner reported the change in her employment and the change in household composition on October 4, 2013. The agency processed these changes on October 14, 2013. This was within the 10 business day timeframe that the agency has, per the Manual, to process a change report. The agency rules require the agency to end an authorization on the next Saturday. In this case, it was October 19, 2013.

I reviewed the agency's documentation regarding the calculation of the overpayment and found no inaccuracies.

Based on the evidence presented, I conclude the agency properly calculated an overpayment of child care benefits in the amount of \$2,398.20 for the period of July 14, 2013 – October 19, 2013.

CONCLUSIONS OF LAW

The agency properly calculated an overpayment of child care benefits in the amount of \$2,398.20 for the period of July 14, 2013 – October 19, 2013.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 8th day of September, 2014

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 8, 2014.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit
Child Care Fraud